BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities	I.07-01-022 (January 11, 2007)
And Related Matters.	Application 06-09-006 Application 06-10-026 Application 06-11-009 Application 06-11-010 Application 07-03-019

REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES ON PHASE 1A ISSUES

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Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits this Reply Brief in Phase 1A of the above-captioned proceeding. Opening Briefs were filed by several parties on August 27, 2007.[1]

I. INTRODUCTION

Three Class A water utilities, Intervenor groups, and DRA have submitted several settlements to the Commission in Phase 1A of this proceeding. Consistent with the Commission's Water Action Plan and the OII, parties have worked hard to develop balanced conservation-related settlement proposals. Even though numerous parties with disparate interests have participated in this proceeding, the parties have succeeded in using a collaborative

[1] Opening Brief of the Division of Ratepayer Advocates on Phase 1A Issues (August 27, 2007) (DRA Opening Brief); Opening Brief of California Water Service Company (U-60-W) (August 27, 2007) (CWS Opening Brief); Opening Brief of the Consumer Federation of California (August 27, 2007) (CFC Opening Brief); Opening Brief of Park Water Company on Issues in Phase 1A (August 27, 2007) (Park Opening Brief), and; Opening Brief of The Utility Reform Network, National Consumer Law Center, Latino Issues Forum and Disability Rights Advocates (August 27, 2007) (Intervenors Opening Brief).

process that has limited disputed issues to a minimum, with the anomalous exception of the Consumer Federation of California (CFC).[2]

DRA is a party to five of the proposed settlement agreements: (1) a settlement agreement with The Utility Reform Network (TURN) and California Water Service Company (CWS) regarding a conservation rate design and Water Revenue Adjustment Mechanism (WRAM);[3] (2) a settlement agreement with Suburban Water Systems (Suburban) regarding a conservation rate design and WRAM;[4] (3) a settlement agreement with Suburban regarding a low income program;[5] (4) a settlement agreement with Park Water Company (Park) regarding a conservation rate design and WRAM,[6] and; (5) a settlement agreement with Park regarding a conservation memorandum account.[7] DRA urges the Commission to adopt these settlements in their entirety. In this Reply Brief, DRA addresses only those issues that are contested or were newly raised in parties' Opening Briefs.

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[2] CFC objects to the proposed settlements on conservation rates and water revenue adjustment mechanisms. CFC Opening Brief.

[3] Amended Settlement Agreement between The Utility Reform Network, the Division of Ratepayer Advocates, and California Water Service Company (**CWS WRAM/Rate Design Settlement**), filed as an attachment to Motion of The Utility Reform Network, the Division of Ratepayer Advocates, and California Water Service Company To Approve Amended Settlement Agreement (Amended Settlement Agreement Attached) (June 15, 2007).

[4] Settlement Agreement Between the Division of Ratepayer Advocates and Suburban Water Systems on WRAM and Conservation Rate Design Issues (**Suburban WRAM/Rate Design Settlement**), filed as Appendix A to the Motion of the Division of Ratepayer Advocates and Suburban Water Systems to Approve Settlement Agreements (April 24, 2007).

[5] Settlement Agreement Between the Division of Ratepayer Advocates and Suburban Water Systems on Low Income Ratepayer Assistance Program Issues (**LIRA Settlement**), filed as Appendix B to the Motion of the Division of Ratepayer Advocates and Suburban Water Systems to Approve Settlement Agreements (April 24, 2007).

[6] Settlement Agreement between the Division of Ratepayer Advocates and Park Water Company on WRAM and Conservation Rate Design Issues (**Park WRAM/Rate Design Settlement**), filed as an attachment to the Motion of the Division of Ratepayer Advocates and Park Water Company To Approve Settlement Agreement (June 15, 2007).

[7] Settlement Agreement between the Division of Ratepayer Advocates and Park Water Company on a Conservation Memorandum Account (**Park Memo Account Settlement**), filed as an attachment to the Joint Motion of the Division of Ratepayer Advocates and Park Water Company To Approve Settlement Agreement (July 30, 2007).

II. SUBURBAN'S REQUEST FOR MEMO ACCOUNT TREATMENT OF PREVIOUSLY INCURRED COSTS MUST BE DEINED

As discussed in DRA's Opening Brief, DRA does not oppose Suburban's proposal to establish a memorandum account to track prospective costs relating to the implementation of conservation rates and a low-income program.[8] However, tracking costs that have already been incurred in such an account is prohibited by the bar on retroactive ratemaking. Despite the additional case citations in its Opening Brief, Suburban fails to provide an alternative legal basis that would enable the Commission to allow previously incurred costs in a memorandum account.

It cannot be disputed that this Commission uses forward-looking ratemaking principles. Thus, the Commission has recently stated:

> The recovery of expenditures through rates for water utilities is based on future test year rate of return ratemaking. [Footnote omitted.] This means that rates of Cal-Am are based on estimated rate base and expenditures for a future year. Actual rate base and expenditures can and do change between the time rates are set and the time events occur.[9]

With regard to Commission authorization of regulatory expenses in particular, the Commission has ruled on this issue as explained in DRA's Opening Brief.[10] In D.05-07-004, for example, the Commission clearly states: "Our estimates are forward looking; the amount we will allow for test year 2005/2006 is not intended to amortize San Gabriel's actual costs of this general rate case although those costs are an important factor to consider in determining what is a reasonable future level."[11] Despite this unambiguous holding, Suburban attempts to argue that its regulatory expenses are an exception to this rule.

Suburban references several cases for the proposition that, "under common Commission practice, the costs incurred to prepare and litigate a general rate case application are commonly amortized over a three-year period after a Commission decision in the general rate case."[12] In

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[8] DRA Opening Brief at 3-6.

[9] D.06-06-036, 2006 Cal. PUC LEXIS 217, *20 (footnote omitted in original) (citing D.02-07-011, *mimeo,* at 6). *See also* D.85-03-042, *mimeo*. at 6; D.07-07-041, 2007 Cal. PUC LEXIS 336, *2-3.

[10] DRA Opening Brief at 5 (citing D.04-09-005, 2005 Cal. PUC LEXIS 295, *21).

[11] D.05-07-004, 2005 Cal. PUC LEXIS 295, *21. Please note that DRA erroneously referenced "D.04-09-005" rather than D.05-07-004 in the text of DRA's Opening Brief, however the footnote citation to that case was accurate. DRA Opening Brief at 5.

[12] Suburban Opening Brief at 11; *see also id.* at 6-9.

particular, Suburban cites several occasions on which a Commission decision refers to the "actual" regulatory expense incurred for the current rate case when discussing the regulatory expense amount that the Commission will adopt and put into new rates. For example, Suburban argues that, in D.03-05-078, "the Commission developed its regulatory expense allotment on the costs associated with that proceeding and based the amount it authorized Suburban to recover on specific events in that general rate case."[13] Suburban attempts to conclude from these cases that there is a "longstanding practice [that] enjoys widespread acceptance at the Commission and it is not considered retroactive ratemaking."[14]

In fact, on rehearing of a general rate case the Commission directly addressed the connection between actually incurred regulatory expense during a rate case, and the expense authorized by the Commission at the end of that regulatory proceeding. California-American Water Company (Cal-Am) argued upon rehearing of its rate case decision that the authorized regulatory expense lacked "evidentiary support."[15] Even in the context of regulatory expense, the Commission's conclusion was unambiguous:

> Cal-Am overlooks, however, that, absent a previously authorized memorandum or balancing account, the Commission's longstanding, consistent practice is to set rates based on forecasted expenses. In this regard, although certainly not determinative, expenses incurred in the present proceeding may be considered in the setting of future rates, along with all pertinent evidence, especially including similar expenses from prior proceedings.[16]

Indeed, in the same rehearing decision, the Commission considered whether it had been reasonable to conclude that Cal-Am's estimate of regulatory expense was excessive.[17] In determining that its previous actions were reasonable, the Commission noted that the vast majority of the actual regulatory expense identified by Cal-Am was incurred prior to issuance of the Commission's Proposed Decision, and went on to observe:

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[13] *Id.* at 7. *See also id.* at 8-9, citing D.03-08-069, D.99-03-032, D.87-08-024, and D.90-02-004.

[14] Suburban Opening Brief at 11.

[15] *Order Denying the Application of California-American Water Company for Rehearing of Decision 03-02-030,* D.03-06-036, *mimeo,* at 4.

[16] *Id.* (emphasis added).

[17] *Id.*

> Presumably, therefore, Cal-Am could have timely submitted any additional expenses it may have wanted the Commission to consider. Moreover, the Commission properly discounted the figure of $171,368 requested at hearing by Cal-Am because it included expenses associated with witnesses whose testimony provided no help in developing the record, given their obvious conflicts of interest.[18]

Despite stating clearly later in the decision that regulatory expenses authorized by the Commission are forward-looking, as discussed above, D.03-06-036 nevertheless refers to specific actual costs being incurred for that proceeding, such as the costs of certain witnesses, in supporting the reasonableness of its adopted regulatory expense. Belying Suburban's interpretation of several Commission cases, D.03-06-036 is an example of how discussion of recently-incurred regulatory expense in a decision is an inadequate basis for concluding that the regulatory expense authorized in that decision was intended to recover those recently-incurred costs.

Suburban argues that "it would be unjust to…not allow Suburban to be compensated for its undertaking in this proceeding."[19] In fact, the solution for Suburban is clear – if Suburban thought that it would be incurring costs not included in its authorized rates, Suburban should have sought immediate authorization to open a memorandum account before it began to incur such costs.

In sum, the Commission must deny Suburban's request to put past costs into a memorandum account. Suburban's references to Commission decisions that discuss actual costs being incurred for a rate case proceeding misconstrue the actual holdings of these decision and are insufficient to support Suburban's request that the entire category of "regulatory expense" should be treated as an exception to the fundamental legal principle of retroactive ratemaking.

III. CFC'S CHALLENGES ARE WITHOUT MERIT

Despite the considerable resources that CFC has forced parties and the Commission to expend both in and out of the hearing room, CFC appears to now recommend that the Commission either (1) essentially suspend Phase 1 of this proceeding so that the companies and

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[18] *Id.*

[19] Exh. 3 (Suburban/Kelly, 6/29/07) at 6.

the Commission can undertake various additional and unnecessary activities,[20] or (2) adopt, with some modifications, the rate design proposals that were originally filed with each company's application,[21] despite the fact that those proposals are no longer supported by the companies themselves and have been superseded by filed settlements. DRA agrees with CWS, however, that CFC has not provided the Commission with viable alternatives to the WRAM/Rate Design Settlements.[22]

For the WRAM/Rate Design Settlements, parties looked at the unique consumption patterns of each district – all of which are new to conservation rates – to develop effective conservation pricing signals while limiting disproportionate effects on low income ratepayers. Parties analyzed voluminous amounts of data, and many factors were carefully balanced against each other based on the knowledge and experience of the parties' experts. DRA urges the Commission to refrain from attempting to modify discrete elements of the proposed conservation rate designs as recommended by CFC. In order to prevent unintended consequences, each modification would have to be accompanied by considerable reanalysis and test runs.[23] The Commission should be particularly cautious about adopting changes based on general principles, as CFC appears to support, without taking into account the specific characteristics of each district. While DRA does not attempt to address every issue raised by CFC in Phase 1A of this proceeding, DRA discusses below the weaknesses of several of CFC's positions.

A. CFC Fails To Present A Viable Alternative Proposal To The WRAM/Rate Design Settlements

First and foremost, the Commission should not view CFC's opposition as a barrier to adopting the WRAM/Rate Design Settlements because CFC has failed to provide viable alternatives to those proposals. Instead, CFC has taken a scattershot approach by proposing a myriad of arguments and "recommendations." The "recommendations" run the gamut from gathering "historical usage information from each customer," to requiring utilities to conduct a

[20] CFC Opening Brief at 2.
[21] *Id.* at 3.
[22] CWS Opening Brief at 12-13.
[23] As stated in each settlement, any change to the settlement would also trigger each party's right to withdraw from that settlement.

"cost allocation study" in a GRC before setting conservation rates, to setting the first tier of conservation rates at 10 Ccfs in every district subject to the settlements.[24]

In contrast to the a la carte and somewhat incoherent approach to rate design employed by CFC, the parties to the settlements looked at a wide variety of issues in crafting the specific rates and breakpoints for each district based on customer usage patterns and specific knowledge of the districts themselves. While it is impossible to anticipate how the customers in each district will react to specific pricing signals, the proposed rate designs were nevertheless carefully analyzed and tested against various measures. While CFC appears to find little value in the extensive analyses and negotiations undertaken by DRA, TURN, and the settling water utilities, CFC does not provide the necessary analyses to support its own alternative rate structures for Suburban, CWS, and Park. Furthermore, unlike TURN, CFC has not made any serious attempt to negotiate with the parties by airing specific concerns and constructively working towards viable modifications to the proposed rate designs. Whether by intent or because of its failure to plan, CFC's actions are tantamount to erratic guerilla tactics in which the Intervenor alleges a variety of problems and supposed "solutions," but refuses to take the time and energy to engage in a dialogue to understand the bases for concerns about those "solutions." CFC's lack of commitment to crafting comprehensive solutions has now inevitably degenerated into an array of miscellaneous objections, rather than a coherent set of feasible alternatives to the WRAM/Rate Design Settlements. The Commission should not let these objections stand in the way of adoption of the settlements in their entirety.

B. CFC's Approach Would Unnecessarily Delay The Implementation Of Conservation Rates

CFC has the dubious honor of being the lone party in this proceeding to advocate what would amount to a substantial delay in the implementation of any conservation rates for a Class A water utility.[25] CFC argues that a "comprehensive look at cost and rate design issues is necessary before any one design of rates is placed into effect."[26] CFC proposes a plethora of

[24] CFC Opening Brief at 2.
[25] *See, e.g., id.* at 2, 27-28.
[26] *Id.* at 27.

undertakings that should, according to CFC, be accomplished for each district before implementing conservation rates, including:

- A fair allocation of costs among customer classes in a GRC;[27]
- Determination of the overall effect of any rate increase in a GRC;[28]
- Resolution of policy issues like the first tier in a tiered rate design "should represent a subsistence level of water or average use, at what level of usage additional tiers should be created, and what price difference between rate tiers should be required, to accomplish the statewide conservation objectives.[29]

Aside from revealing CFC's lack of familiarity with the existing rate making process, these suggested proposals are both infeasible and unnecessary in the context of this proceeding, and thus do not provide a sound basis for delaying all of the conservation rates proposed in the settlements. While the Commission may determine, and parties may advocate, that some of these activities may be appropriate to consider in adjusting conservation rates in the future, the benefits of completing the laundry list of activities that CFC offers are far outweighed by the rapid implementation of conservation rates that already have a firm foundation.

Furthermore, CFC's repeated refrain that the Commission should look at cost – in terms of forward-looking costs and cost allocation – before adopting conservation rates is highly problematic.[30] Aside from the fact that such an examination is procedurally inappropriate for Phase 1A of the OII, and is infeasible as a practical matter if the Commission wants to implement conservation rates by next summer, CFC has not identified how specific costs in any of the districts subject to the settlements are cause for concern. DRA also notes that, even if the Commission were to address cost allocation as a component of furthering its conservation goals, it would only be appropriate for Phase II of this proceeding.

C. CFC's Recommendations Are Not Tailored To The Specific Companies At Issue

CFC applies simplistic generalizations to challenge the carefully wrought conservation rates in the settlements. For example, CFC advocates use of "10 Ccfs as the break point for the

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[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at 2, 22-23, 25-26.

first tier rate,"[31] stating that "Ms. Wodtke's research led her to determine that an allowance of 10-11 Ccfs per month would provide enough water for basic human consumption and sanitary needs of a family of four" (citing to Ms. Wodtke's conclusions drawn from the document "Waste Not, Want Not: The Potential for Urban Water Conservation in California" by the Pacific Institute).[32] DRA Witness Olea clearly articulated, however, that reliance on such an analysis is not appropriate for establishing conservation rates for a specific district consistent with the Commission's goals. Ms. Olea references the need to look at "a microeconomic analysis, where we are looking at a specific utility and assigning pricing to that specific utility"[33] rather than the "macroeconomic analysis" of the Environmental Protection Agency and the "Waste Not, Want Not" article.[34] Ms. Olea explains that, in this proceeding:

> [W]hat we're discussing here are rate structures that look at consumption as is, make no value judgment as to how appropriate that consumption level is, and provide an economic incentive to cut consumption back from the point it is today to some not defined point as appropriate.[35]

As another example, CFC argues for seasonal rates for all three of the settling water utilities. CFC states that "[p]eak demand has an effect on water utility costs, and should be addressed by seasonal rates."[36] CFC's attempts to draw a correlation with "peak demand" in the electric industry, and relies on the general observations of CWS Witness Morse and academic literature to essentially argue that, if water costs more in the summer, rates should be higher in the summer.[37] CFC makes no attempt whatsoever to show that, for each district subject to the settlements, (a) there is a seasonal pattern of consumption, (b) that water costs more during times of high consumption, and (c) that seasonal rates are the only appropriate design for those

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[31] *Id.* at 2.

[32] *Id.* at 20-21, citing Exh. 19 (Wodtke Testimony, 7/20/07) at 10.

[33] DRA/Olea, 2 RT 267:9-11.

[34] DRA/Olea, 2 RT 267-268.

[35] DRA/Olea, 2 RT 268:15-20.

[36] CFC Opening Brief at 24. While CFC cites 4 RT 558-9 (CFC/Wodtke) in support of this statement, the cited pages reflect that CFC supports seasonal rates, but does not provide any basis for concluding that "peak demand has an effect on water utility costs," much less that this is true for the specific settled districts.

[37] CFC Opening Brief at 24-25.

districts, rather than tiered rates that take seasonality into account in the manner that the settlements do.[38]

In addition, some recommendations are moot or make little sense. For example, CFC advocates "[d]irect[ing] each utility to develop a study of customer usage patterns so that contributions of customer classes to peak demand in the summer can be identified and seasonal rates established."[39] As the settling parties have repeatedly stated, the tiered rates for each company were in fact based on actual customer consumption patterns, including seasonal patterns.[40] CFC also questions the value and expense of customer education efforts directed at customers whose bills will decrease under conservation rates,[41] and instead recommends "notifying only those customers whose monthly bills are likely to increase under the increasing block rates…."[42] Putting aside the inherent difficulty of trying to anticipate how the consumption of a specific household is likely to change under tiered rates, and the possibility that sending conservation information to a new (and potentially) shifting subset of residential customers may save little money and could even result in increased costs, CFC's recommendation runs counter to the Commission's goal of inducing an overall reduction in consumption, regardless of whether the reduction is from high users or low users of water. Finally, all the other parties seem to agree that changes in pricing signals should be accompanied by widespread customer education and non-price conservation programs, rendering CFC's proposal of a limited distribution of conservation information inappropriate.

D. CFC's Challenges To The WRAMs Are Misguided

With regard to the negotiated WRAMs for each utility, CFC's discussion of whether or not the proposed conservation rate designs are "experimental" is misguided.[43] For example, CFC states that, in a GRC for the Monterey district of California-American Water (Cal-Am), a "WRAM was proposed [… '[b]ecause the experimental rate design would increase the

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[38] Motion of the Division of Ratepayer Advocates and Suburban Water Systems to Approve Settlement Agreements (April 24, 2007) (4/24/07 Motion of DRA and Suburban) at 9.

[39] CFC Opening Brief at 3.

[40] 4/24/07 Motion of DRA and Suburban at 9.

[41] *Id.* at 35-36.

[42] *Id.* at 3.

[43] *Id.* at 28-29.

variability of Cal-Am's revenues,'" quoting D.96-12-005.[44] CFC then argues that one of the reasons that a WRAM is not necessary is the conservation rates "can hardly be deemed experimental at this time…."[45] CFC erroneously focuses on whether a rate design is "experimental," rather than on more pertinent issues such as whether the rate design increases revenue variability. And while CFC labels all of the proposed rate designs as "very conventional," CFC does not argue that there will be no impact on revenue variability.[46]

Furthermore, CFC agrees that "decoupling is necessary only if the utility actually has an incentive to sell more water because selling more means getting more revenue,"[47] but then argues that "[n]o evidence was presented in this case to demonstrate" that this is true for the settling water utilities. In fact, the motions supporting the WRAM/Rate Design Settlements for both Cal Water and Park make this assertion, and CFC does not appear to have ever presented a credible challenge to those statements.[48] Finally, with regard to Suburban, the settling parties propose a pricing adjustment WRAM, rather than a conventional decoupling WRAM, for the very reason that additional water sales do not necessarily correlate with more revenue for them.[49]

IV. THE COMMISSION SHOULD ADOPT THE DRA/SUBURBAN LOW-INCOME SETTLEMENT WITHOUT MODIFICATION

On April 24, 2007, DRA and Suburban filed a motion to adopt a Settlement on Low Income Ratepayer Assistance Program Issues (LIRA Settlement). In the LIRA Settlement, DRA

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[44] *Id.* at 28.

[45] *Id.* at 29.

[46] *Id.*

[47] *Id.*

[48] Motion of The Utility Reform Network, the Division of Ratepayer Advocates, and California Water Service Company To Approve Amended Settlement Agreement (Amended Settlement Agreement Attached) (June 15, 2007) at 13; Motion of the Division of Ratepayer Advocates and Park Water Company To Approve Settlement Agreement (June 15, 2007) at 10. DRA notes that a party's mere allegation that there is "no evidence" should be given little weight if there has never been any indication that the facts – in this case, whether Cal Water's and Park's revenues increase as water sales increase – are in dispute. This is particularly true when the newly challenged issue is a view that is generally accepted in water policy. As a general matter, the Commission observed in the Water Action Plan that "[b]ecause water utilities recover their costs through sales, there is a disincentive associated with demand side management: a successful campaign to reduce water use leads to less revenue and less profit." Water Action Plan at 9.

[49] *See* 4/24/07 Motion of DRA and Suburban at 13; DRA/Olea, 2 RT 304:19-28) – 305:1-9.

and Suburban recommend that the Commission adopt a Low-Income Ratepayer Assistance (LIRA) program for Suburban that provides a flat monthly credit of $6.50 to Suburban's low-income residential customers with 5/8" x ¾" and ¾" metered service who meet the eligibility requirements for the California Alternate Rates for Energy (CARE) low income program.[50] The $6.50 discount is equal to approximately 15 percent of the average monthly customer's bill.[51]

Intervenors recommend that the Commission modify the LIRA Settlement to provide qualifying low-income customers with a 15 percent discount on their total bill rather than a fixed $6.50 discount. DRA opposes this modification. Intervenors' proposed modification is inconsistent with the Commission's increasing emphasis on water conservation and with the Commission's Water Action Plan. Furthermore, as discussed below, the approach in the LIRA Settlement is consistent with other similar low-income programs adopted by the Commission for other Class A utilities.

A. The Commission Should Consider Conservation When Establishing a Low-Income Rate Assistance Program for Water

Intervenors argue that the Commission should not consider conservation in establishing a low-income rate assistance program.[52] DRA disagrees.

The Commission has repeatedly stated that water conservation should be considered in developing a low-income rate assistance program for water utilities. In December 2005, the Commission adopted its Water Action Plan (WAP), identifying six policy objectives that will guide it in regulating investor-owned water utilities. The Commission identified "assistance to low income customers" as one of its policy objectives, stating that it would develop options to increase affordability of water service for low-income customers with a specific emphasis on water conservation program for these customers.[53] More specifically, the Commission stated

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[50] LIRA Settlement at ¶ 2.1.

[51] *Id.* at ¶ 3.1.

[52] Exh. 5 (TURN/Finkelstein Testimony) at 5.

[53] WAP at 5.

that Public Utilities Code § 739.8[54] "requires that potential impact on conservation be considered when the [low–income] rate assistance program is developed."[55]

The LIRA Settlement is consistent with the Commission's Water Action Plan and Public Utilities Code § 739.8, as well as with past Commission precedent finding that a LIRA program that offers a fixed discount to the service charge and leaves the quantity rate unchanged promotes water conservation, while a program that offers a percentage discount to the total bill does not.[56]

DRA disagrees with the Intervenors that there is a conflict between affordability and conservation. The proposed LIRA Settlement and the proposed WRAM/Rate Design Settlement work hand-in-hand, providing low-income consumers two means to reduce their bills, through a low-income credit and through water conservation. DRA and Suburban considered the consumption pattern of likely low- income customers in developing the proposed conservation rates in the WRAM/Rate Design Settlement. In particular, the settling parties developed the Tier 1 quantity limit of up to 20 Ccfs using a proxy of indoor water use based on seasonal indicators of Suburban customers, which should be adequate to meet the basic needs of most households, including low-income households. The Environmental Protection Agency's (EPA) estimates average indoor water usage of 2.81 Ccfs per person per month.[57] Based on the EPA estimate, the top of Tier 1, 20 Ccfs per month, would provide the indoor water needs for family sizes up to 7 persons.

Intervenors argue that by using a fixed rate discount the parties are trying to extract further conservation from high usage low-income users.[58] In fact, the conservation rates

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[54] Public Utilities Code § 739.8 states: (a) Access to an adequate supply of healthful water is a basic necessity of human life, and shall be made available to all residents of California at an affordable cost.
(b) The commission shall consider and may implement programs to provide rate relief for low-income ratepayers.
(c) The commission shall consider and may implement programs to assist low-income ratepayers in order to provide appropriate incentives and capabilities to achieve water conservation goals.
(d) In establishing the feasibility of rate relief and conservation incentives for low-income ratepayers, the commission may take into account variations in water needs caused by geography, climate and the ability of communities to support these programs.

[55] *Id.* at 15-16.

[56] *Application of San Gabriel Valley Water Company,* D.05-05-015, *mimeo*, at 3, 5.

[57] Found at http://www.epa.gov/watersense/pubs/indoor.htm.

[58] Intervenors Brief at 5.

agreed to in the Conservation Rate Settlement provide the same signal to all high users -- that reducing usage can reduce your bill.

The Commission should adopt the LIRA Settlement. The LIRA and Rate Design Settlements provide LIRA participants two ways to reduce their water bills and make water affordable. Unlike the Intervenors' proposal, the LIRA settlement is also consistent with the Commission's increasing emphasis on conservation. The Intervenors' proposal would work at cross-purposes with the Commission's conservation goals and should not be adopted.

B. A Low-Income Program Should Not Be Tailored Around A Single, Undefined and Unknown Subset of Low-Income Consumers to the Detriment of Other Low-Income Customers

The underlying assumption behind the Intervenors' proposal to modify the low-income settlement to provide qualifying customers with a 15 percent discount on their entire bill if a low income customer receives a high bill, the high bill is likely the result of a large number of people living in the household[59]. Intervenors, however, provide no evidence to support this claim.

Intervenors have not offered any study of water usage by low-income customers to show what the water is used for and at what levels. Low-income customers, like other customers, could have high usage due to inefficient or leaking fixtures. Low-income families may choose to use water to maintain landscaping[60] or to wash a car or for other nonessential uses. The Commission cannot assume that high usage is mainly due to large households without record evidence supporting this conclusion.

Intervenors do not define what they consider to be a large household. (Finkelstein/TURN, 1 RT 99.) In fact, Intervenors oppose defining a large household and instead prefer to provide a discount evenly to all low-income water usage, even if that usage is excessive and not essential. (Intervenors Brief, p. 7)

Intervenors admit that their proposal is less beneficial for a low income customer who uses an average amount of water, however they argue that the negative impact of their proposal on these customers is minimal. (Id. at p. 8) As DRA demonstrated in Exhibit 6, the $6.50 fixed

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[59] *Id.* at 4.

[60] DRA notes that low-income customers qualifying for the LIRA program are likely home owners as multifamily housing is usually not individually metered and such residents would not qualify for the LIRA program. Without evidence to support such claims, it is presumptuous to assume that low-income homeowners would not want to maintain landscaping.

discount provides a low-income customer with average consumption of 20 Ccfs a month, a discount amounting to 17.94% of their bill. The same customer would pay $1.07 more per month under the Intervenors' proposal. Low-income customers who conserve more water and use less than 20 Ccfs a month would pay even more under the Intervenors' proposal.

Rather than define a LIRA program around an unknown group with unknown needs, DRA recommends that the Commission adopt the LIRA and WRAM/Rate Design Settlements and monitor the programs for their effects on low-income households. The Intervenors and Suburban have entered into a Settlement that requires data collection on total number of disconnections per month, monthly number of reconnections, with LIRA customers broken out, and total number of residential 48-hour notices per month, which DRA does not oppose. If monitoring reveals that low-income households are not receiving sufficient benefits from the LIRA program, the parties can address this issue in Suburban's next GRC, scheduled for January 2009. At that point, parties can consider how best to address this subset of low-income customers.

C. Commission Precedent Supports a Fixed Discount

Intervenors cite San Jose Water and Golden State's low-income programs as precedent to support modification of the LIRA Settlement to provide LIRA participants with a 15 percent discount to their entire bill. DRA disagrees that the Commission should follow these decisions to determine the method of LIRA discount. San Jose Water and Golden State's LIRA programs were two of the earlier water LIRA programs adopted by the Commission. As discussed below, more recent Commission decisions have declined to adopt a percentage discount and instead have adopted fixed discounts to promote water conservation.

The first case cited by Intervenors is a 2002 Commission decision adopting a LIRA program for Golden State Region III[61] (formally Southern California Water Company). In this decision, the Commission rejected DRA's proposal to waive the service charge, stating that there was no record supporting the position that waiving or reducing the service charge would promote conservation or that providing a percentage discount would increase consumption.[62]

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[61] The decision also authorized Golden State to file an advice letter to implement the program in Region II.

[62] In the Decision, the Commission emphasized that the decision was limited to the facts of this case that by adopting Golden State's proposal it was not suggesting that it be used as a model which it was

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(D02-01-034, mimeo, at 11-12, FOF 5.) However, the record in this proceeding demonstrates that changing the price of water can effect consumption.[63] As Mr. Jackson testified:

> What we are doing here in this process is implementing rates that will provide an incentive for our customers to conserve water. And no matter what type of increasing block rate structure we go to, that is the central message, that at some point with increased usage you are going to be charged a higher rate and therefore receive a higher bill. And that's the central message, that we want to send our customers a price signal to encourage them to conserve water. (Jackson/Park, 2 RT 239.)

Moreover, in the Golden State decision the Commission rejected DRA's fixed discount proposal because it imposed conservation measures on only low-income customers. The Commission noted that, in the Cal-Am Monterey district where it had adopted a fixed discount, the Commission had also adopted an inverted block rate structure that tied higher consumption levels to higher rates. (D.02-01-034, mimeo, at 12.) Thus, in Monterey, all customers, not merely the low-income subset, pay higher rates for higher usage. (Id.) The Commission noted that Golden State did not have conservation plan like Monterey thus adopting a fixed discount would impose conservation measures on only low-income customers. (See id. at 12)

Unlike the Golden State case, DRA and Suburban recommend that the Commission adopt conservation rates so that all Suburban residential customers pay higher rates for higher usage.

DRA notes that Golden State modeled its low-income program and its proposed 15 percent discount proposal after the California Alternative Rates for Energy.[64] However, the record in this proceeding demonstrates why it is not appropriate to use the energy discount methodology for a water LIRA program. As Mr. Morse of Cal Water testified, there is a fundamental difference between water and energy use that justifies different programs.[65] A customer's basic energy needs are weather sensitive while basic water needs are not.[66] Cold winters and hot summers can cause dramatic increases in energy consumption and can create

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endorsing for all Commission-regulated water utilities. D.02-01-034, *mimeo,* at 2.

[63] Park/Jackson, 2 RT 239; DRA/ Olea 2 RT 291.

[64] D.02-01-034, FOF 2.

[65] CWS/ Morse, 3 RT 351.

[66] *Id.*

great hardship for low-income consumers. Seasonal weather changes will have minimal effects on a low-income customer's basic water needs.

The second case cited by the Intervenors is a 2004 decision adopting a settlement between DRA and San Jose Water company on a LIRA program as part of the San Jose GRC. However, as Commission Rules of Practice and Procedure 12.5 makes clear, Commission adoption of a settlement "does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding" unless the Commission expressly provides otherwise. Thus this decision does not establish precedent for adopting the Intervenors' proposal.

Since the Commission adopted these decisions it has issued at least seven decisions adopting LIRA programs for other Class A water utilities that provide a fixed rate discount.[67]

In the first of these decision, D.05-05-015, the Commission noted that it is reasonable to consider the affects of a low-income program on conservation and that such consideration is consistent with Public Utilities Code § 739.8.[68] Most subsequent decisions cite to the San Gabriel decision as a guideline for discussing the LIRA programs and finding that the adopted LIRA program satisfies the directives of Public Utilities Code § 739.8.

The Commission should adopt the DRA Suburban LIRA Settlement as it is consistent with Commission precedent and appropriately treats conservation as part of its proposed LIRA program.

D. A Fixed Rate Discount is Equitable and Easy to Understand

Intervenors argue that a LIRA program that provides low-income customers with a percentage discount off their entire is equitable because it offers the same level of discount to everyone. (Intervenors Brief, at p. 7). In reality, the Intervenors' proposal provides qualifying low-income customers who use water inefficiently a larger discount than those that conserve. DRA disagrees that this is equitable to all low-income customers.

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[67] *Application of San Gabriel Valley Water Company*, D.05-05-015; *Application of Apple Valley Ranchos Water Company*, D.05-12-020; *Application of Park Water Company*; D.06-10-036; *Application of California-American Water Company,* D.06-11-050; *Application of Valencia Water Company,* D.06-11-051; *Application of California-American Water Company,* D.06-11-052; *Application of California Water Service Company,* D.06-11-053.

[68] *Application of San Gabriel Valley Water Company,* D.05-05-015, *mimeo* ,at 5.

The LIRA Settlement proposal is equitable because it provides everyone with the same discount regardless of usage so that inefficient water users are not rewarded with higher discounts.

While Intervenors argue that the Commission should adopt a percentage discount because it is easy for customers to understand, a fixed discount program is also easy to understand. Customers will see the same discount on their bill every month and know that this amount will not change and that changes in their bill are due to changes in water consumption.

Moreover, the fixed discount makes estimating the subsidy afforded to the low-income program more predictable and the impact on non-participating customers more certain.[69]

V. IMPACT OF ATTRITION FILINGS ON CONSERVATION RATES

For each district subject to the WRAM/Rate Design Settlements, the proposed conservation rates were negotiated based on the current revenue requirement for that district. In its Opening Brief, Park noted that, because the annual attrition or escalation factor for its revenue requirement goes into effect in January, its new revenue requirement will not be reflected in conservation rates if the Commission adopts the WRAM/Rate Design Settlement after January 1, 2008.[70] DRA supports Park's recommendation that its conservation rates should reflect the company's current revenue requirement.[71] Thus, if the Commission adopts the WRAM/Rate Design Settlement between DRA and Park such that implementation of the conservation rates occurs after Park's escalation year rate increase goes into effect, Park should recalculate the conservation rates in consultation with DRA. DRA suggests that submission of the recalculated rates by advice letter is preferable to a late-filed joint exhibit because an informal filing imposes less of an administrative burden on the parties and the Commission. Finally, DRA does not object to Park's proposal that the 90-day time period allowed for implementation of the

[69] Exh. 6 (DRA Phase 1A Report Regarding Suburban) at 2-4. The Intervenors have not attempted to estimate the impact of their proposal on non-participating customers that must fund the program. TURN/ Finkelstein, 1 RT 92.

[70] Park Opening Brief at Section II.

[71] Park Opening Brief at II.A.4.

conservation rates run from the date that recalculated rates are deemed approved by the Commission.[72]

In addressing this issue, DRA has realized that, because the attrition adjustment occurs on an annual basis for all Class A water utilities, it is in fact an issue for each WRAM/Rate Design Settlement in Phase 1A. While DRA has not had an opportunity to formally address with each of the settling parties how these revenue requirement changes should be reflected in the negotiated conservation rates, DRA proposes that all of the attrition adjustments be handled in a manner similar to that discussed above for Park's district. Thus, at the time of an attrition adjustment, the water utility should consult with DRA to develop and submit by advice letter a modified conservation rate design that includes the annual adjustment to the revenue requirement. Regardless of the procedural mechanism used, however, DRA strongly urges that the Commission require that companies consult with DRA before the recalculated rates are submitted to the Commission. DRA is open to discussing any other approaches, but believes that this proposed approach is reasonable and efficient.

VI. CLARIFICATIONS TO CWS' OPENING BRIEF

DRA provides the following clarifications to CWS' Opening Brief:

- On Page 5, CWS refers to "water production costs" and water infrastructure investment" in stating that the settling parties "developed block rate (tier) break points based on consumption patterns unique to each district."[73] as "vary[ing] significantly among districts…." In support, CWS includes in the accompanying footnote a citation to DRA Witness Olea (2 RT 262). DRA clarifies that its analyses of the appropriate rates for CWS' districts did not include consideration of water production costs and water infrastructure costs.
- On Page 6, CWS states that "[b]udget-based rates are a form of rationing rather than conservation rate design."[74] In support, CWS cites only to DRA Witness Olea (2 RT 269). This statement is somewhat inaccurate because Ms. Olea indicated that budget-based rates are not appropriate for the conservation rate designs in Phase 1 of this proceeding,[75] and did not mean to imply that either budget-based rates and conservation, or rationing and conservation, are mutually exclusive.

[72] Park Opening Brief at II.A.4.
[73] CWS Opening Brief at 5 (footnote omitted).
[74] CWS Opening Brief at 6 (footnote omitted).
[75] DRA/Olea, 2 RT 269:1-11.

- On Page 6, CWS refers to additional information needed to develop budget-based rates, and states, "This information is not available," citing Ms. Olea, 2 RT 280-281. To clarify, Ms. Olea was stating that the information was not available to DRA to use in developing the proposed rates.
- On Page 8, CWS states that the proposed WRAM and MCBA will "[r]educe overall water consumption by Cal Water ratepayers,"[76] citing to Ms. Olea (2 RT 275). DRA clarifies that the proposed conservation rates will reduce water consumption, not the WRAM and MCBA mechanisms.

VII. CONCLUSION

For the reasons discussed herein, the Commission should approve in Phase 1A of this proceeding the five settlement agreements to which DRA is a party, and deny Suburban's request to include in its requested memorandum account any costs incurred prior to Commission authorization of that account.

Respectfully submitted,
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September 17, 2007

[76] CWS Opening Brief at 8 (footnote omitted).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **"REPLY BRIEF OF THE DIVISION OF RATEPAYER ON PHASE 1A ISSUES"** in **I.07-01-022 et al** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on September 17, 2007 at San Francisco, California.

/s/ NANCY SALYER

NANCY SALYER

N O T I C E

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